REMARKS

Applicants gratefully acknowledge the withdrawal of the previous restriction requirement of August 18, 2008.

The 35 U.S.C. §121 Restriction Requirement

Claims 1-12 have been subjected to a restriction requirement under 35 U.S.C. §121 as allegedly failing to form a single general inventive concept under PCT Rule 13.1. Applicants respectfully traverse this restriction requirement. Reconsideration and withdrawal of the restriction requirement set forth in the Office Action mailed on November 25, 2008 is respectfully requested.

In the Office Action mailed November 25, 2008, the Examiner required restriction under 35 U.S.C. §121 as follows:

Group I: The compound or composition of the formula I, where R_1 or R_2 contains a six-membered heteroaryl ring with at least 2 heteroatoms wherein at least one of them is a nitrogen, according to claims 1-5.

Group II: The compound or composition of the formula I, where R_1 or R_2 contains a six-membered heteroaryl ring with only one nitrogen, according to claims 1-5.

Group III: The compound or composition of the formula I, where R_1 or R_2 contains a five-membered heteroaryl ring with at least one nitrogen, according to claims 1-5.

Group IV: The compound or composition of the formula I, not previously described in any of the above groups, according to claims 1-5.

Group V: A method of treating a glycogen synthase kinase 3 mediated condition using a compound from one of the above groups, according to claims 6-7.

Group VI: A method of treating a glycogen synthase kinase 3 mediated condition using a compound from one of the above groups, according to claim 8.

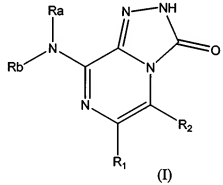
Group VII: The composition of one of the above groups, combined with an additional agent, according to claims 9-10.

Group VIII: A method of treating a glycogen synthase kinase 3 mediated condition, using a composition from Group VII, according to claims 11-12.

Group IX: A method of treating a glycogen synthase kinase 3 mediated condition, using a composition from Group VII, according to claims 11-12.

The Examiner has alleged that the inventions listed as Groups I-IX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2 they lack the same or corresponding special technical features. The Examiner has stated that the technical feature linking the claims is a triazolopyrazine compound and that the core structure is seen in numerous patents and papers. The Examiner then alleges that Mallett et. al., Journal of the Chemical Society Section C: Organic (1966), (22), 2038-43 teaches several triazolopyrazine ring systems and therefore the feature linking the instant claims does not constitute a special technical feature as it does not define a contribution over the art.

Applicants respectfully disagree with the Examiner that the feature linking the instant claims does not constitute a special technical feature as defined by PCT Rule 13.2. Applicants respectfully submit that the instant claims are directed to 8-amino-2H-[1,2,4]-triazolo[4,3-a]pyrazine-3-one derivatives of Formula (I) as shown below.



(I)

None of the compounds disclosed in the Mallett paper is an 8-amino-2H-[1,2,4]-triazolo[4,3-a]pyrazine-3-one derivative and therefore is not novelty destroying with respect to the instant invention. As such, the instant claimed compounds are novel 8-amino-2H-[1,2,4]-triazolo[4,3-a]pyrazine-3-one derivatives. Applicants respectfully submit that the novel 8-amino-2H-[1,2,4]-triazolo[4,3-a]pyrazine-3-one derivatives make a contribution to the art and no reference of record has been shown to destroy the novelty or unity of this invention. The special technical feature which links claims 1-12 is the novel 8-amino-2H-[1,2,4]-triazolo[4,3-a]pyrazine-3-one derivatives since claims 1-12 are directed to the compounds themselves, compositions comprising the compounds, combinations of the compounds and other active agents and methods of using the compounds.

With respect to the grouping proposed by the Examiner in the restriction requirement Applicants have the following comments. The compound and composition claims according to claims 1-5 appear to have been grouped based on the variables R_1 and R_2 containing various heteroaryl groups or not (see Groups I-IV above). Applicants respectfully submit that the definition of the variables R_1 and R_2 do not directly recite any heteroaryl group. As such, the basis for the restriction based on definitions of various heteroaryl groups as set forth by the Examiner is not found within the direct definition of the variables R_1 and R_2 as recited in the claims. Applicants submit that the restriction of the compound claims is thus unclear. Applicants also note that Groups VIII and IX as set forth in the Office Action are identical and thus are not independent and distinct groupings.

For these reasons, Applicants respectfully request the Examiner to reconsider and withdraw the instant restriction requirement under 35 U.S.C. §121.

Provisional Election of Group and Species

Applicants are making a provisional election of a group and species, with traverse, in order to preserve the right to petition under 37 C.F.R. §1.114. Applicants hereby provisionally elect, with traverse, Group IV, directed to compounds of formula (I) other than those set forth in groups I through III. Applicants hereby provisionally elect, with traverse, the species 8-[2-(benzothiazol-2-ylamino)-ethylamino]-6-*tert*-butyl-2H-[1,2,4]triazolo[4,3-a]pyrazin-3-one, which is the sixth compound listed in claim 4. A Applicants hereby provisionally elect, with traverse,plicants respectfully submit that the elected species reads on claims 1-12.

Having addressed all points and concerns raised by the Examiner, Applicants respectfully submit that the claims are in condition for allowance. An early and favorable action in this application is respectfully requested.

Respectfully submitted,

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